

**BOARD OF APPEALS CASE NO. 5161**

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**BEFORE THE**

**APPLICANT: Joppa East Limited Partnership**

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**ZONING HEARING EXAMINER**

**REQUEST: Variances to permit development on slopes in excess of 15% and to permit more than 5% of the lots as panhandle lots in the R2 District; Philadelphia Road, Parcels 6 and 10, Joppa**

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**OF HARFORD COUNTY**

**Hearing Advertised**

**Aegis: 8/3//01 & 8/8/01**

**Record: 8/3/01 & 8/10/01**

**HEARING DATE: September 12, 2001**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Joppa East Limited Partnership is requesting a variance, pursuant to Section 267-41D(7) of the Harford County Code, to permit development on slopes in excess of 15% when using the NRD development adjustment, and a variance, pursuant to Section 267-22G, to permit more than 5% of the lots intended for detached dwelling to constitute panhandle lots (proposed 6.6%) in an R2/Urban Residential District.

The subject property is located on the north side of Philadelphia Road in the Gunpowder Development and is more particularly identified on Tax Mp 64, Grid 2E, Parcel 6 and 10. The parcel consists of 66± acres, is presently zoned R1/Urban Residential District/NRD adjustment to R2 standards and is entirely within the First Election District.

Mr. James Keefer appeared and qualified as an expert landscape architect and environmental scientist. Mr. Keefer stated that the Gunpowder subdivision ("Gunpowder") was approved in 1998 as shown on the approved Preliminary Plan ("Plan") introduced into evidence as Applicant's Exhibit 6. The Plan indicates that 325 total single family detached lots are currently approved. Phases I and II of Gunpowder are either complete or under construction. Three hundred thirty-six (336) single family detached lots are allowed by right under the Code in Gunpowder. Sixteen (16) of the 325 approved lots shown on the Plan (4.9%) are panhandle lots because more than thirty percent (30%) of the site constitutes Natural Resource District ("NRD") under the Code, the site is being developed as a conventional development with open space pursuant to Section 267-41D(7) of the Code.

## **Case No. 5161 – Joppa East Limited Partnership**

The Applicant is requesting permission to develop six (6) more panhandle lots (for a total of 22 panhandle lots and 331 total single family lots) in Gunpowder and to disturb slopes in excess of 15%. The 15% slopes to be disturbed are not located within the NRD. No NRD disturbances are proposed and no permission to disturb the NRD is being requested.

Mr. Keefer went on to say that at the time the Plan was prepared by MRA, topographical information for the site was obtained from the Harford County GIS system ("GIS Topo"). GIS Topo is created using aerial photographs of Harford County and was used by MRA in preparing the Plan. No field run survey information is used. GIS Topo is not as accurate as topographic information obtained by survey on the site. Based on the GIS Topo, Applicant believed that contiguous areas of land with an area of at least 40,000 square feet with slopes in excess of 15% existed on the subject property, thereby making development inappropriate. As a result no lots were proposed on the subject property on the Plan.

However, after the Plan was approved, field run topographic information was obtained by MRA survey crews. It was then determined that the GIS Topo was incorrect. MRA discovered that some of the 15% slopes on the subject property were man made and that other areas of 15% slope were fragmented, with each having flatter areas immediately below them. Mr. Keefer testified that the purpose of restricting disturbance of the 15% slopes is to reduce the likelihood of erosion which could affect stream beds and the NRD from impacts. He said that the fragmented nature of the 15% slopes and the presence of flatter areas located on the site reduces the likelihood of damage from erosion. As a result, based on the better, more accurate topographical information, it has been determined that the subject property can be developed without environmental impacts.

Using Applicant's Exhibit 7, a rendered version of the site plan submitted with the application, the proposed lots, areas of disturbance, 15% slopes limits of the NRD and Bob's Branch, a stream located near the subject property, were shown by Keefer.

## **Case No. 5161 – Joppa East Limited Partnership**

As indicated in the report prepared by MRA entitled, "Panhandle and 15% Slope Variance Impact Analysis Gunpowder, Harford County, Maryland dated June 2001" prepared by MRA introduced into evidence as a part of Applicant's Exhibit 5 and attached to the Staff Report as Attachment 8 ("Impact Analysis"), the total area of proposed disturbance of the 15% slopes is 3,685 square feet. This is approximately half of the area of the 15% slopes which exist on the proposed lots. Under the Code, the NRD buffer (which may not be disturbed) is extended for 150 feet from the center line of the stream bed of Bob's Branch. The Applicant's proposal does not contemplate any disturbance of this area. Lot 3 will be located 180 feet from Bob's Branch. Applicant's Exhibit 8 prepared by MRA showed a cross section view of the site across Lot 3 which indicated the nature of the slopes on the site, including those to be disturbed, and the distance from Bob's Branch and the NRD. An exaggerated scale was used in creating the exhibit in order to depict the differences in slope of the site as it falls from the proposed lots to the bed of Bob's Branch.

Mr. Keefer testified that in his opinion, disturbance of the 15% slopes as proposed would not harm Bob's Branch, the NRD, or any sensitive environmental features on the site. Any development work performed on the site would comply with applicable regulations to protect against erosion and damage to the NRD. All development plans must be approved by the Harford County Department of Public Works and the Soil Conservation District.

In the event the variance is not granted the subject property could still be developed with additional lots. Public cul-de-sacs could be constructed as a matter of right to provide access to the lots. Applicant's Exhibit 9, also prepared by MRA, depicted the type of development which could occur without the requested variances. However, developing the property with cul-de-sacs would create an additional 15,000 square feet of impervious surface causing additional storm water runoff problems which could adversely affect the environment. Stormwater management control devices would have to be constructed in the NRD to accommodate this runoff. Roads and SWM facilities may be constructed in the NRD as a matter of right. Approximately one additional acre of clearing would be required if cul-de-sacs were used. Creation of the cul-de-sacs would cause approximately 29,000 square feet of the 15% slopes to be impacted.

## **Case No. 5161 – Joppa East Limited Partnership**

William Monk testified that due to the presence of NRD and buffers, Bob's Branch, 15% slopes and its irregular configuration, the subject property is unique and contains topographical conditions not present on surrounding parcels which justify the requested variances. He testified that in his opinion, literal enforcement of the Code would result in practical difficulty to the Applicant in that without the requested variances, the Applicant would not be able to utilize its land for development, even though the proposed development would cause no adverse impact. Developing the lots with permitted cul-de-sacs would cause far greater environmental impacts than would development pursuant to the requested variances. Constructing public cul-de-sacs would require County taxpayers to pay maintenance costs in perpetuity. The proposed panhandle lots would utilize private driveways which would be maintained by the users thereof at no cost to the taxpayers. If the cul-de-sacs were built, the cost to maintain the accessory storm water management facilities to be built in the NRD in perpetuity would be borne by the lot owners in Gunpowder. Mr. Monk said that constructing the cul-de-sacs would not result in any advantage to anyone or benefit the parcel or the surrounding community. Granting the requested variances would not impair the purpose of the Code or the public interest. The Code provides that panhandle lots are to be utilized to achieve better use of irregularly shaped parcels and to avoid development in areas with environmentally sensitive features. This is exactly what is proposed by the Applicant in this case.

Anthony S. McClune, Manager, Division of Land Use Management of the Department of Planning and Zoning ("Department") also testified. Mr. McClune summarized the Staff Report issued by the Department which recommended approval of the Applicant's request on four conditions. Staff agreed with Applicant's witnesses that the subject property was unique, the limited disturbance of the 15% slopes would not have an adverse impact on the NRD and that additional panhandle lots would not have an adverse impact on the neighborhood or the intent of the Code.

## **Case No. 5161 – Joppa East Limited Partnership**

Ocie Jackson of 1612 Bull's Lane, Cynthia Hendrick of 1513 Bull's Lane, Bill Rasnake of 1604 Bull's Lane, Carolyn Hicks of 1404 Old Joppa Road, John Lepus of 1603 Bull's Lane, none of whom live in the Gunpowder subdivision, testified in opposition to the Applicant's request. Some of the Protestants expressed conclusory testimony about alleged environmental impacts caused by the granting of the variances. None of their testimony rebutted or contradicted the evidence presented by the Applicant and the Department of Planning and Zoning that no such impacts would result. Most of the Protestants objected to traffic on Bull's Lane allegedly generated by the development of Gunpowder and by the public in general. Several Protestants requested that the Applicant erect a barrier on Bull's Lane to prevent traffic from traveling on it to the lots to be created if the Applicant's request was granted. However, the Protestants could not agree among themselves as to where on Bull's Lane the barrier should be erected. Dee Gerst of 2016 Park Beach Drive testified that she was not opposed to the granting of the variances, but did not want the Applicant to erect a barrier on Bull's Lane.

### **CONCLUSION:**

The Applicant, Joppa East Limited Partnership, is requesting a variance pursuant to Section 267-41D(7) of the Harford County Code to permit development on slopes in excess of 15% when using the NRD development adjustment, and a variance pursuant to Section 267-22G, to permit more than 5% of the lots intended for detached dwelling to constitute panhandle lots (proposed 6.6%) in an R2/Urban Residential District.

Section 267-41D(7) of the Harford County Code provides:

“Development adjustment. If more than thirty percent (30%) of a parcel zoned residential or agricultural, as of September 1, 1982, is within this district, the housing types and design requirements, excluding gross density, of the next most dense residential district shall apply, provided that sensitive environmental features on the site are protected. When this adjustment is used, development shall not occur on slopes in excess of fifteen percent (15%) for an area of forty thousand (40,000) square feet or more.”

## **Case No. 5161 – Joppa East Limited Partnership**

**Section 267-22G of the Harford County Code provides:**

**“Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:**

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.”**

**Harford County Code Section 267-11 permits variances and provides:**

**"Variances from the provisions or requirements of this Code may be granted if the Board finds that:**

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

**This property unquestionably has unique topographical features which have impacted its development as a subdivision from inception. The current proposal is an environmentally sound approach that will utilize the property for its fullest potential while limiting the adverse environmental impacts normally associated with development on severe slopes. It is clear to the Hearing Examiner that allowance of the increase in panhandles will reduce the amount of forested area destroyed by one acre or more which is a highly desirable planning goal. It is equally clear that by disallowing the variances requested, the Applicant would still be able to develop the subdivision to some extent but environmental damage would be far more severe than that which results if the variances are granted. For example, a cul-de-sac configuration would create an additional 15,000 square feet of impervious surface area.**

## **Case No. 5161 – Joppa East Limited Partnership**

The protestants who appeared in opposition to the request each expressed some concerns about environmental impact, however, their concerns were speculative and unsupported by factual evidence. In fact, their fears of severe environmental impact to the streams and slope areas appear to be fully mitigated by the Applicant's proposal.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

Following the guidance of the Cromwell court, the Hearing Examiner finds that the property is unique, containing topographical features that challenge design and environmental standards. Moreover, it is these unique topographical features that cause or create the need for the requested variances. The grant of the requested variances will allow the subdivision to be fully developed while minimizing environmental disturbance that would otherwise occur. Disallowance of the variances results in practical difficulty in designing lots that would be fewer in number than those proposed and with significantly increased environmental damage to the parcel and area watershed as well as resulting in an increased cost burden of creating cul-de-sacs as an alternative to panhandles.

## **Case No. 5161 – Joppa East Limited Partnership**

The Hearing Examiner recommends approval of the requested variances, subject to the following conditions:

1. The Applicant shall submit a revised preliminary plan to the Department of Planning and Zoning for review and approval.
2. The Applicant shall submit final plats for these sections to be approved and recorded among the land records of Harford County.
3. Common drives shall be utilized as depicted on the Applicant's Panhandle Variance Plan. Common Drive Agreements shall be submitted for review and approval and final approved versions shall be required of each panhandle lot owner and same shall be recorded among the land records of Harford County.
4. Total amount of disturbance on slopes exceeding 15% shall be limited to 3,690 square feet.
5. Applicant shall put in place a permanent barrier to block access of vehicles to the subdivision along Bull's Lane.

Date NOVEMBER 5, 2001

William F. Casey  
Zoning Hearing Examiner